

**A CLARIFICATION OF
MARTIAL LAW AND MILITARY RULE ¹**

SUMMARY

I. The original Purpose of Article 32 of the Maryland Declaration of Rights, unaltered to the present day, was to assure that a civilian would be tried only in a state or federal forum and not by the military tribunal (a court-martial).

II. Military rule over a civilian community in time of domestic disorder,

today popularly termed "martial law", varies in its delegated duties according to the necessity of the moment. While the governor may impose military rule in accordance with his statutory duties, there are considerations of constitutional limitation which must be considered, particularly the Due Process clause of the United States Constitution.

I. THE MEANING OF "MARTIAL LAW" IN ARTICLE 32 OF THE MARYLAND DECLARATION OF RIGHTS: THE ARTICLE'S PURPOSE

Article 32 is a direct, undiminished legacy of the Convention of 1776.² No succeeding convention has altered its vintage "Maryland language." The courts have not interpreted the Article, nor have Maryland's attorneys general put an official gloss upon its passages. The original purpose of Article 32 is, therefore, decisive, and our search for its meaning must be historical.

Befogging the question is the contemporary popular meaning of "martial law" which may be said to be the rule by military forces over a civilian community when domestic disorder has gone beyond the control of the customary officers of the peace. We will avoid confusion by terming such armed control "military rule."

While military rule is explicitly provided for in neither federal nor state constitutions, the United States Supreme Court from an early day recognized that

"[U]nquestionably, a State may use its military power to put down an armed insurrection, too strong to be controlled by the civil authority. The power is essential to the very existence of every government, essential to the preservation of order and free instructions, and is necessary to the States of this Union as to any other government."³

Military rule is born of necessity, and its extraordinary measures are reconciled with the democratic process in that unlawful, belligerent force must be met with military force so that the climate of domestic order may be restored. Military rule is permitted only until the civil authority is once again able to function.

The significant question remains whether, in the face of this principle of a state's self-preservation, Article 32 was intended to prohibit the imposition of

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² The Chronology of Article 32 of the Maryland Declaration of Rights in the CONVENTION DEBATES:

1776: Article 29, p. 297;
1851: Article 29, p. 201;
1864: Article 31, pp. 360-362;
1867: Article 32, p. 141; PERLMAN 152.

³ Luther v. Borden, 48 U.S. (7 How.) 1, 45 (1849).